

SPECIAL COUNCIL MEETING

FEBRUARY 20, 2014

The Special Council Meeting of the Council of the County of Kaua'i was called to order by Council Chair Jay Furfaro at the Council Chambers, 4396 Rice Street, Room 201, Līhu'e, Kaua'i, on Thursday, February 20, 2014 at 2:07 p.m., after which the following members answered the call of the roll:

Honorable Mason K. Chock, Sr.
Honorable Gary L. Hooser
Honorable Ross Kagawa
Honorable Mel Rapozo
Honorable JoAnn A. Yukimura
Honorable Jay Furfaro

Recused: Honorable Tim Bynum

Chair Furfaro: We have one item on the agenda today for this Special Council Meeting. Before we continue, may I ask for an approval of the agenda?

APPROVAL OF AGENDA.

Mr. Rapozo moved for approval of the agenda, as circulated, seconded by Ms. Yukimura, and carried by a vote of 6:0:0:1 (*Mr. Bynum was recused*).

PUBLIC COMMENT.

Pursuant to Council Rule 13(e), members of the public shall be allowed a total of eighteen (18) minutes on a first come, first served basis to speak on any agenda item. Each speaker shall be limited to three (3) minutes at the discretion of the Chair to discuss the agenda item and shall not be allowed additional time to speak during the meeting. This rule is designed to accommodate those who cannot be present throughout the meeting to speak when the agenda items are heard. After the conclusion of the eighteen (18) minutes, other members of the public shall be allowed to speak pursuant to Council Rule 12(e).

Chair Furfaro: I understand that we have four (4) people signed up to speak today, but since there is only one item today, I do not think they would like to speak under the public comment portion. Under our regular rules, they will be allowed to speak for a total of six (6) minutes instead of only three (3) minutes if they were to speak under the public comment portion. Let us go to the agenda item and take public comment.

SCOTT K. SATO, Council Services Review Officer: Chair, our first registered speaker is Glenn Mickens, followed by Joe Rosa.

There being no objections, the rules were suspended.

GLENN MICKENS: For the record, Glenn Mickens. Thank you, Jay. I have a short testimony. I also testified on February 7. You also have a copy

of that testimony. I hope you refer to it because there are some things that I think are very important and I hope you do too.

Chair Furfaro:
attachment on ES-700?

Excuse me, Glenn. You are referring to your

Mr. Mickens:

Yes.

Chair Furfaro:

Okay, got it.

Mr. Mickens: Thank you. Along with my testimony today, I have included a copy of my last testimony regarding ES-700; the same subject matter as today's ES-703. I will not repeat all of the positives as I applauded Ms. Carvalho for when she served with honesty and integrity on our Council, and then represented the people with a ninety-seven percent (97%) conviction rate as our County Prosecutor. I do ask all of you to look carefully at how this pattern of people at the top of our government goes after anyone who exposes wrongdoing in the system; Ms. Carvalho, the Chief of Police, and our County Auditor to name a few. The amount of taxpayer money being spent on lawsuits, Executive Sessions, outside and inside Legal Counsel, Court costs, et cetera, is probably in the millions of dollars and must be stopped. You have ES-703 before you and the check of the records will show that Mr. Bynum had previously said that he looked forward to a Court hearing in his suit against the County. Now in ES-703, we have the County Attorney requesting this ES to provide the Council with a briefing regarding the settlement in Tim Bynum v. County of Kaua'i, et al. One must wonder if this total issue that has now changed direction from a "slam dunk" for Mr. Bynum to a wanting to settle it could have been totally eliminated by a mediation process with a lot of money being saved. You remember somebody sitting here and talking about mediation and how much money we could save by doing this. I believe you said you were going to check into it. I think it was going to be put on the agenda or something, which I think is a great idea. I have no legal background, but it appears that those on the offensive side of this case are trying to cut their losses and get this issue over. With more research before this battle began, could this whole issue not have been avoided? Too many politics and in fighting goes on with many of these cases and no matter who wins or loses, the taxpayers always ends up paying for it. They get the short-end of the stick and I think the people watching these sessions really realize it and want something done about it. Thank you very much.

Chair Furfaro: Glenn, one small correction. In fairness to the County Attorney, today's Executive Session is a briefing which was requested by certain members of the Council. I did not come from the County Attorney; it came from the Council. I just wanted to point that out to you.

Mr. Sato:
Shaylene Iseri.

Our next speaker is Joe Rosa, followed by

JOE ROSA: Good afternoon, members of the Council. For the record, Joe Rosa. Again, we are here to hear another Executive Session. Again, from the start of this thing, it was confined strictly to personalities; not by just cause. It was something that was involving people not looking up the rules and regulations of the County Ordinances, went ahead, and did things and felt that they were immune to the laws of the County, et cetera. Look at one of our presidents. President Nixon was impeached on the Watergate Scandal. Nobody is immune to the law. Laws are made to be followed, but not to be used at a person's advantage;

more so, in a position that people elect those people to be public servants. I emphasize that. They are supposed to be representing the public voters and not trying to do things to benefit themselves. They got caught for the irregularities and then the personalities had to come out, mudslinging, and all of these things came up prior to an election. They talk about dirty politics, but I do not know what that was. It was not something that was done with soap and water. It was dirty; it was really mudslinging. You could see it all over. In this case here, the Council should not seek a settlement in a way because it was something that was done personally by someone who thought they could overlook the law because of a position that they had. It is just something that has been around. It was in the papers and a so-called "controversial case" about the rentals and all of that. There is nothing to hide about it. The only way you can stop this kind of thing with a County who is always caught in liabilities is to get the thing in the courts and let the people know the truth because there is Charter rules and rules of the County and the State that need to be followed. No one is above the law. A law is a law, so you just have to follow it. If you commit a crime, the old saying when I was growing up was, "If you commit a crime, you serve your time."

Chair Furfaro: Joe, that was your first three (3) minutes. If you want to continue, then I will give you your second three (3) minutes.

Mr. Rosa: Yes, I will wrap it up in a few minutes. As I was saying, I do not think there should be a settlement. A settlement would not prove anything. The County will be faced by liability suits after suits, after suits. The taxpayers are paying it. Remember like I said, you were elected by the public and you are public servants. When I worked with the State of Hawai'i, I had to respect that. It came down from our bosses that you are in the eyes of the public and you should set an example. Those are the things from the old days and those rules were good rules. Like I say, I do not think there needs to be a settlement. I do not think it has been fair in this case because it was involved in dealing with personalities. Time and time again, you need just cause. Take it from there and let your conscious be your guide. Remember, you are public servants to serve the public; not individualists. Thank you.

Chair Furfaro: Thank you, Joe.

Mr. Sato: Our next speaker is Shaylene Iseri, followed by Rich Wilson representing Shaylene Iseri.

Chair Furfaro: Shay, I am going to give you all six (6) minutes up front, but at three (3) minutes, I will give you a heads up.

SHAYLENE ISERI: Good afternoon, Council Chair, Council Vice Chair, and the rest of the members of the Council. Council Chair, I would like to ask for permission if I could just put up a couple of slides and explain those slides during my time to speak. It will be a lot quicker if that is done.

Chair Furfaro: It is your six (6) minutes, so if you want to go ahead, you can go ahead. Let us get her set-up here. I am going to move my seat so I can view your slides.

Ms. Iseri: In this matter, it was very clear from the beginning that all of the attorneys that were hired in this matter, and there were several, made statements to me and to others that the claims that Mr. Bynum had

filed were baseless and without merit, and that in fact, we had looked forward to suing Mr. Bynum to pay for the attorneys' fees for filing a frivolous lawsuit. What is interesting to know is that from the very beginning, Mr. Castillo has sabotaged this case. Way back in 2010, he had assigned Ian Jung to review actions taken in the Bynum zoning violations and specifically assigned it to the attorney who had just come from the attorneys that were handling Mr. Bynum's case, which was Ian Jung. Jung had worked for Mr. Bynum's attorney's firm right before going to the County Attorney's Office and Jung later wrote an opinion disparaging the actions of Sheilah Miyake.

Back in 2012, while the County Attorney represented myself or claimed to, and also Mr. Bynum; in the Executive Chambers, he testified, "Be very cautious because the Prosecutor is out to get you." This is sworn testimony under oath taken on April 23. Those pages are made available to you and to the public. It is very clear, the direction of the County Attorney, and how he manipulated this case from the very beginning in 2012.

There were most definitely, very irrational actions that were taken by this County Attorney. He failed to communicate with me that he had been served with a complaint from the very beginning and in fact, had aligned himself with the Plaintiff from the very beginning. He, at no time, told me when he was served with the complaint or who my Special Counsel was going to be. He also made statements against me to the Plaintiff. He failed to answer my complaint in a timely manner, subjecting me to potential default judgment. He failed to allow the cost of travel to assist with preparation of the case. He failed to save this County's attorneys' fees by hiring numerous attorneys. He also failed to initiate the County's payments of attorneys' fees. He also allowed Special Counsel to defer to his judgment and not to the independent judgment of the Special Counsel and specifically put in his contract that he did not have the authority to override the insurance company's decision or determine strategy in the case. He failed to protect this County by allowing continuances on the motions to dismiss, which was adverse to the County's interests. This County Attorney also failed to inform the Council of its rights loss and insurance contract. He also failed to protect the County's interest by giving the insurer total decision making power without meeting the threshold. These actions are totally contrary and adverse the actions of the County.

Back when the case was first initiated in September of 2012, he himself, made himself available to the Plaintiff, not to the Defendant. Like I said, he never contacted me that he was served with a complaint and that I was a party to the complaint. In fact, the press release, which was published in numerous media outlets, I spoken to the County Attorney and he seems to understand the gravity of the situation. Mr. Castillo has offered to make himself available to the media. This is totally contrary to the County's position because normally in a regular case, they would have no comment pending any lawsuit. He failed to file my answer. The complaint was served on September 21. I learned this from my own private attorney. The answer was due twenty-one (21) days later. The County Attorney made no request for an extension. He did not appoint until almost two (2) months later, Special Counsel, where my Special Counsel came in and rushed to get the permission to file the answer late, again, subjecting me to a default judgment... or the County because this was in my official capacity. We finally filed the answer on December 17, 2012, but this was after I had incurred my own costs to fly up because the County Attorney failed to authorize costs for me to meet with the attorney to answer the complaint. I put out my own money. There were numerous times that I have E-mails that we have sent requests via Robert Katz to ask the County

Attorney for funding for one hundred fifty dollars (\$150) to two hundred dollars (\$200) for me to fly up and meet with the attorneys and be present at the depositions of Tim Bynum's and Jake Delaplane's on those days; January 28 and April 23. Again, on April 23, he sent a letter refusing for the County to pay for any of my costs of travel to meet with the attorney to provide assistance on this matter. It was clear from the very beginning that it was the County Attorney's intention to have the insurer settle. In fact back in November 23, 2012, Robert Katz, who is my Special Counsel; in his contract, the County Attorney did a contract that provided that Katz had absolutely no authority to override the insurer. It was very interesting that this was way back in the beginning of 2012 when that insurance company was never, ever considered. He also hired and tried to rack up attorneys' fees by hiring three (3) Special Counsels when only one (1) would have sufficed. In fact in another matter, he only hired one (1) Special Counsel to represent the County and other employees in their official capacity.

It was clear from the very beginning of what this County Attorney's intention was. On March 25, there was a demand letter from Margery Bronster and it was clear again that he had made himself available to the media for Ms. Bronster, Tim Bynum's attorney. Throughout this demand letter, which the Council has a copy of— first of all, it is not addressed to my Special Counsel; it is addressed to the County of Kauai's attorney. It also says to give this to Al Castillo and the insurer. Again, you question, "Why is the insurer continually being mentioned way in the beginning of the case back in March 25, 2013?" The attorney mentions that they expect the attorneys' fees to run to five hundred thousand dollars (\$500,000), the magic number to get to the insurer. They also say that the insurer should expect to budget that amount...

Mr. Sato:

Six (6) minutes.

Ms. Iseri: She says, "This is an opportunity to settle within the County's insurance limits under its Public Entity Excess Liability Clause." It is obvious that this attorney is well-aware of what is in the insurance, even though I was not aware of that and was never told of that until after the case had been settled. She mentions, "If the County does not settle now, we do not anticipate providing County and insurer another opportunity." Again, throughout all of this, the insurance company is a major player in how this case is being handled.

Mr. Chock:

Shay, that was your six (6) minutes.

Ms. Iseri:

Okay.

Mr. Chock:

Do you have much more in this presentation?

Ms. Iseri:
to my last slide and conclude there.

I can go through it real quickly. I will just go

Chair Furfaro:

Set the clock for one (1) more minute please.

Ms. Iseri: Okay. On April 29, there was a request for mediation. Again, Margery Bronster requests here, "We will not do mediation because there is one additional non-scheduling-related caveat. We are willing to mediate only if the County's insurer will participate in person." Again, clearly discussions with the Council. Again here, with the insurance company. It was very

clear that in this matter, I do not know how the insurance company was even able to get on this matter because we never went to five hundred thousand dollars (\$500,000). The only amount that was authorized in this case was four hundred eighty-six thousand dollars (\$486,000). The October 23 dates where it says that it were approved, there were not sufficient votes to approve that. Yet, the County Attorney was present and never advised the Council that you never reached the threshold limit and again, went ahead and signed a contract with the insurer that took away the rights from this Council to have final decision making authority. You can refer back to these Court dates where the insurance presence... whenever we had a motion to dismiss, it got continued until after the funding was appropriated to get to the five hundred thousand dollars (\$500,000). There was a mistake calculated by the County Attorney because he thought we had reached the five hundred thousand dollars (\$500,000) on May 8 when there was a request for seventy-five thousand dollars (\$75,000) by the County Attorney; however, I came and testified and asked him why he was asking for seventy-five thousand dollars (\$75,000) when my Counsel was only asking for twenty-five thousand dollars (\$25,000). That is why you see later on, on October 23, that he came back and asked for the fifty thousand dollars (\$50,000) to get it up to the limit. It is clear that this was a manipulation dump on the County Attorney that he used his position, power, and trust to deceive the Council and the people, and reward his allies with taxpayers' moneys, high-paying jobs, and deviated from this duties and past practices to achieve his own political and personal agenda. I ask that this Council look into the actions of the County Attorney because clearly, this Council, as well as the people of Kaua'i, have suffered as a result of his egregious actions.

Chair Furfaro: Okay. I have to cut you off there, Shay. Will you be having someone else continue this presentation?

Ms. Iseri: That was the last slide.

Chair Furfaro: That was the last slide?

Ms. Iseri: Yes.

Chair Furfaro: Thank you.

Mr. Sato: Our last speaker is Rich Wilson representing Shaylene Iseri.

RICH WILSON: Mr. Chair, Vice Chair, and members of the Council. It is always a pleasure. Thank you again. Since Shay went over seven (7) minutes, I will be real brief. She has covered the majority of the points. Really in this situation, you have a County Attorney who has got two (2) hats; one is he is your Counsel, as well as he is Ms. Iseri's Counsel. He has to zealously advocate for you. Clearly, what the County Attorney has omitted to do throughout this litigation in terms of not advising about limits of insurance and not disclosing that there were issues with respect to your control once those limits were hit. Hiring three (3) attorneys when you only need one (1)— you can draw your own conclusions as to why that occurred, but the net affect was that you hit your five hundred thousand dollar (\$500,000) deductible when you should not have. Being essentially bullied by a carrier— a carrier is not a party; you folks on behalf of the County is the party. You have a full right to say, "No, we are going to go forward with a motion for summary judgment. If in that point in time there is a change and it is negative to you, we will accept the consequences. We have been advised by all of our Counsel to

go forward. We plan to go forward. Too bad, carrier, but you did not get any sort of that advocacy, which you would otherwise expect.” I have been a commercial civil litigator for twenty-three (23) years. This is absolutely unheard of. I have one last big point on the relationship between the County Attorney’s Office and you folks. When you bring an outside independent Counsel, it does not get filtered to the County Attorney. Outside independent Counsel is directly to you folks. You folks are the client. It seems that there is a pattern in practice that when there is independent Counsel, it is always filtered through the County Attorney’s Office, which means that the County Attorney, who is supposed to be distant and independent, is still pulling the strings of Counsel. That is just not right. There should be an investigation. That should be cleared up. With respect to Ms. Iseri, if you connect the dots, when the lawsuit was filed, Mr. Castillo— I have the pictures and I can give them to you... but Mr. Castillo was a big advocate for Justin Kollar, her opponent. He held signs and took out an advertisement in The Garden Island. He is represented to have spoken to Mr. Bynum’s Counsels even before there has been service and that he understands there are problems and he is making himself available to the press. That is unheard of... absolutely unheard of. That totally undercuts not only her position, but yours as well when you have the County Attorney making any sort of a statement. That is not done... just not done. Really, if you look at it, it is all about insurance. The first request for mediation was April of last year and the quote was... I have the specific E-mails... “We are not doing anything unless the insurance carrier is there.” It was repeated and repeated. In fact, one of Mr. Bynum’s Counsel sent me a letter saying... please bear with me one second. This is April 30 after I basically advised Mr. Bynum’s Counsel that we are going to go to trial. If you want to dismiss Shay with prejudice, do it; other than, we are going to trial. “Rich, I would be happy to speak with you separately about settling with Shay. We are not so much interested in her money.” Am I done, Mr. Chair?

Mr. Sato:

Three minutes.

Chair Furfaro:

You have another three (3) minutes.

Mr. Wilson:

Thank you. “We are not so much interested in her money as other potential things she could provide us.” This is all “where is the insurer” and “it is not really about Shay.” You have a County Attorney whose Deputy worked for Mr. Hempey’s firm and Mr. Hempey represents Mr. Bynum. Connect the dots. I am not going to speculate as to what conversations were going on. I think that is inappropriate, but you folks have the power to do an investigation. This is just absolutely unheard of. Councilmember Yukimura, when I was here last, you had a couple of questions about the expense and if we did not settle, what the expense would be. It really troubled me. I thought about that a lot. I guess my response is, “Is the truth not worth any expense?” That is where I will leave it at. Unless there are any questions, Mr. Chair, thank you for allowing me to speak.

Chair Furfaro: Any comment here? I do want to make a comment. The question about the October 23 date for the billing cycle that was brought up on the PowerPoint slide, I want you to know that we did receive the complaint to the Clerk and the Deputy Clerk and I have instructed them within the time allowed to get some clarification from the County Attorney. That is just for your information. I wanted to share that with you at this point.

Mr. Wilson:

Thank you, Chair.

Chair Furfaro:

Mr. Kagawa has a question for you.

Mr. Kagawa: Hi Rich. Thank you for your testimony. What are the advantages of getting the truth, compared to settling? I will help you out. If we get the truth out, then future actions by County employees will probably not reoccur. On the other hand, if it is a frivolous lawsuit, the people will not be as anxious to file frivolous lawsuits because they will find out that on that past case, he filed a lawsuit and lost a lot of his money because he lost. When you bring a frivolous lawsuit that loses, the County does not pay for your attorney fees; you have to put up your money and take your shot. If you lose, you will have to pay for your own attorney fees, right?

Mr. Wilson: Councilmember Kagawa, you are exactly right. What happens when you settle frivolous lawsuits on the eve of motions which you could win on, it just makes you look like a target and you have a big bull's eye on your back because people... I am generally a Plaintiff's lawyer and Plaintiff's lawyers will see that the County will always have its tail between its legs and settle. No matter if the case is frivolous, there is always that carrot out there. Sometimes, it does not make intuitive sense, but you need to defend cases to defend. I am not saying that if there is a case with merit, those are cases that you resolve or those are cases that you mediate. We have talked about that a few times. Settling a case on the eve of dispositive motions when your lawyers have all said, "This is a case that is defensible. It is frivolous and *shibai*," that makes you look like a target. The County will continued to be sued again and again until it stands up and says, "Enough. We will defend ourselves. We have done nothing wrong."

Mr. Kagawa: I will just reiterate by saying that when Mr. Bynum first filed his lawsuit, the first thing Ms. Bronster said was, "We are waiting for our day in Court. We want to get the truth out. My client has been tormented and severely hurt financially," and this and that. Now, we are hearing about a settlement? It seems like the truth is no longer important. I guess I am very confused as to what was said when he first filed it until now.

Mr. Wilson: I am also a little confused because if I recall, the Council's position as the client was that this was a case that they were going to defend. When the decision was made, it was made without any input from the six (6) of you. If you came up with that and that was your decision to do, that is fine, but the decision was made without any... as far as I can understand from the attorneys that I have spoken to, it was, "We settle because that was told to me." Mr. Chair, in terms of all these settlement negotiations and discussions, not once did Mr. Bynum's Counsel contact me about, "Let us resolve and settle this."

Mr. Kagawa: Okay. I am done with my question. Thank you.

Mr. Wilson: Thank you.

Mr. Rapozo: I have a question.

Chair Furfaro: Mr. Rapozo, you have the floor.

Mr. Rapozo: It is more of a request, Mr. Wilson, because you have made some comments that are very interesting to me. One of the slides

show the reference to Mr. Castillo being available for comments for the Plaintiff and that is disturbing; I do not think that has ever been heard. I am assuming that came out of the press release that was done by Ms. Bronster.

Mr. Wilson: The first press release was September 19, 2012, and that was in the first press release right at the bottom.

Mr. Rapozo: A couple of other references you make— we are only privy to what we are told in Executive Session by our attorneys and Special Counsel. We are not privy to communications between our attorneys and the other defendants, meaning Ms. Miyake and Ms. Iseri. We are not privy to those documents, but you reference some documents and E-mails which are of concern to me. I think some may have been stated in the PowerPoint, but some directives that they are not authorized to speak or make determinations over the insurance. Are you able to provide us at a later time, the documentation— a lot of these things, we are hearing for the first time. I think it is concerning. One of the E-mails that you reference from... I am not sure who you said it was from about "We are not interested in the money." I think those things raise some concerns for me. Overall, I think the timeline that was presented is of concern to me. I think you mentioned some photos. Is that something you can provide to us as well?

Mr. Wilson: I have a lot of what you just referenced. I can provide the Council with any of the other E-mails.

Chair Furfaro: I have already asked a member of our Staff to see you after this for some of those exhibits that you just referenced so we can confirm what we got from you.

Mr. Wilson: Certainly, Mr. Chair.

Chair Furfaro: That would be Aida.

Mr. Wilson: Thank you, Mr. Chair. Just one comment about this being a concern; this is concerning for me. I am coming here on my own dime. It is that important and that is why I am here. Thank you very much, Mr. Chair.

Mr. Rapozo: I have a process question. It is not really for Mr. Wilson, but I intend to ask a lot of questions in Executive Session. I know we have brought in resource people in the past, but I would ask that if we get to a point in Executive Session and need some clarification from Mr. Wilson, that he would be available as a resource person. I do not know if that is appropriate. Maybe not...

Chair Furfaro: I would like you to leave your cell phone number with the Staff.

Mr. Wilson: Certainly.

Chair Furfaro: If we get that clarified, then we will reach out to you.

Mr. Wilson: Thank you very much.

Mr. Kagawa: I have a process question as well. Is one of the purposes of going into the Executive Session to find out why the Council did not have the settlement authority rather than the insurance company? Is that a question?

Chair Furfaro: I will clarify this for everyone again. As I pointed out with Mr. Mickens, the request to go into this session today came from the Council, not from the County Attorney. Clearly, it is for a briefing so we will not be coming back because we will not be voting on anything. At this point, I think any questions that you have that deal with contractual arrangements with the insurance company are open for discussion.

Mr. Kagawa: Okay. Thank you.

Chair Furfaro: I am going to call our County Attorney up because we need to read the item.

MAUNA KEA TRASK, Second Deputy County Attorney: Good morning, Chair and members of the Council.

Chair Furfaro: Good morning, young man.

Mr. Trask: Second Deputy County Attorney, Mauna Kea Trask on behalf of the County Attorney's Office. I will read the Executive Session item.

EXECUTIVE SESSION:

ES-703 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4, 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), on behalf of the Council, the Office of the County Attorney requests an Executive Session with the Council to provide the Council with a briefing regarding the settlement in Tim Bynum vs. County of Kaua'i, et al., Civil No. CV12-00523 RLP (United States District Court), and related matters. This briefing and consultation involves the consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

Chair Furfaro: Thank you.

Mr. Rapozo: I have a question for Mr. Trask.

Chair Furfaro: Okay.

Mr. Rapozo: Are you going to be taking us in Executive Session or is Jennifer going to be?

Mr. Trask: Jennifer Winn is on O'ahu. She will be available to you by phone. I believe she is at one of the other Special Counsel's office. As you know, I have not had any contact with this case.

Mr. Rapozo: That is why I am asking because we are going to go in to get briefed and the briefer is not here. She is available via phone?

Mr. Trask: She will be available via phone. I believe I am here to read it in per the request of the County Clerk.

Mr. Rapozo: Okay.

Chair Furfaro: Let me clarify that. At the request of the Chair, she is available to us by phone. By the request of the Chair, you are present to read us into Executive Session. That came from me. Before we posted this, we already knew she was going to be traveling. This was the window of time we had with her on the conference call.

Mr. Rapozo: Mr. Chair, the only reason I ask is because at the last Executive Session, I did ask for some specific documents, spreadsheets, and analysis of cases, but I do not see that in my folder, so I guess I will assume that it was not done. If Jennifer is in O'ahu, I do not think we are going to get it. That is a concern of mine, Mr. Chair.

Chair Furfaro: We will clarify that assumption when we go into the briefing.

Mr. Rapozo: Okay.

Mr. Kagawa: It just appears to me that physically, Jennifer is not here. It seems like at the end of the Executive Session, we will have a lot of questions are still unanswered. I think instead of belaboring it, let us just find out what all of the questions are and I think posting another date because she needs to be here. If she is our County Attorney, she should not be on O'ahu on this issue. Not to say that it is her fault, but it is just that she is the key person and by her not being here, I do not think it is a good day.

Chair Furfaro: I understood that we would have some questions for her and she has prepared some answers for us, but if we are not satisfied with the briefing as we go along, I am open to another posting. Let us see exactly where we are at when we go in. Mauna Kea, I apologize for referring to you as "young man" because I know you are the Second Deputy.

Mr. Trask: I guess I have crossed that line.

Chair Furfaro: I have watched you in *puka* shorts jumping off the Hanalei Pier. Please accept my apology.

Mr. Trask: Thank you, Chair.

Chair Furfaro: I am going to call the meeting back to order. The County Attorney has briefed us on the item. As it has been my practice, I would like a roll call vote to go into Executive Session.

There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Rapozo moved to convene in Executive Session for ES-703, seconded by Mr. Kagawa, and carried by the following vote:

FOR EXECUTIVE SESSION:	Chock, Hooser, Kagawa, Rapozo, Yukimura, Furfaro	TOTAL – 6,
AGAINST EXECUTIVE SESSION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	Bynum	TOTAL – 1.

Chair Furfaro:
minutes please. Thank you.

Let us be in the room within ten (10)

ADJOURNMENT:

There being no further business, the meeting was adjourned at 2:46 p.m.

Respectfully submitted,



SCOTT K. SATO
Council Services Review Officer

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